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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF WASHINGTON**

11 UNITED STATES OF AMERICA,)	
)	
12 Plaintiff,)	CASE NO. 2:21-CR-00142-TOR
)	
13 - vs -)	DEFENDANT GUDINO-PENA
)	RESPONSE TO UNITED
14 MATTHEW GUDINO-PENA)	STATES' SENTENCING
)	MEMORANDUM
15 <u>Defendant.</u>)	

16 Comes now Defendant Gudino-Pena and presents the following response
17 to the United States' Sentencing Memorandum (ECF 170).

18 There is only one fact Mr. Gudino-Pena wishes to present to the court
19 regarding his conduct in this matter and that is that he joined this conspiracy in
20 July of 2021 and was arrested on October 18th of 2021. So although the facts of
21 this case are significant, much of it predates Mr. Gudino-Pena's involvement.
22 With that said, he does take responsibility for his role in the conspiracy. He is
23 not arguing that he had a minor role, nor that his guideline calculation is
24 incorrect. He does not object to the pre-sentence investigation report and makes
25 one plea to the Court: for a low-end guideline sentence.

26 The United States does not differentiate much between those portions of
the conspiracy that predate Mr. Gudino's involvement. Instead, it writes "the

1 facts detailed below primarily address how the conspiracy . . . affected
2 individual lives and impacted numerous communities in the Western United
3 States.” ECF 170, p 3-4.

4 This is appropriate, of course, but it is also appropriate to delineate what
5 happened before versus after Mr. Gudino-Pena joined in the conspiracy. Mr.
6 Gudino-Pena began his association with his co-conspirators innocuously
7 enough by agreeing to join them on a trip from California to Arizona in July of
8 2021. Mr. Gudino-Pena’s friend Barinder Dhaliwal saw him at Mr. Gudino-
9 Pena’s sister’s residence, where he resided, from April to July of 2021. This
10 was before he went to Arizona with Carr, O’Mealy and others and before he
11 knew them. Once he was with them, he saw what they were doing. He could
12 have and did not disassociate himself and eventually did join their enterprise.
13 He has taken responsibility for his conduct, but wishes to inform the court that
14 he was not a part of much of what is outlined in the United States’ sentencing
15 memorandum.

16 The other basis upon which Mr. Gudino-Pena asks the Court for a low-
17 end guideline sentence is the fact that he will not be eligible for time credits
18 under the First Step Act pursuant to 18 U.S.C. §3632(4)(d)(4)(D)(lxvi). This
19 statute is dissimilar to the others right around it which address other substances
20 and require the offender to have been a leader/organizer. Mr. Gudino-Pena was
21 far from a leader/organizer and did not specifically choose the substance being
22 distributed by the organization.

23 There is also a fact in Mr. Gudino-Pena’s upbringing that did not make
24 its way into the PSIR. His friend Barinder wrote the following to undersigned
25 counsel in an email dated October 1, 2022:

26 Matthew Gudino-Pena and I met as freshmen in high school at Gustine high school. Both
Matt and I were not from the area and were new to the group of kids at that school. Having

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1 that in common, we became friends and remained close for all of high school. Matt and I
2 played football together and although he did not start out that way, once we were playing
3 football, he got his grades up and was doing well. He and I would go to movies together,
4 went out and tried to get girls together and things were good.

5 What is important to know about Matt is that he never had a central stability in his life. He
6 was always bouncing from house to house and never knew where he was going to sleep on a
7 day-to-day basis. Matt never had any money and if he did not have a phone, we all knew it
8 was going to be a while before we could contact him because he had no money and no person
9 who was going to replace his phone for him. Because of this instability and lack of familial
10 support, Matt was quick to be loyal to anyone who showed him any love, support or
11 stability. I say this because although Matt was a little bit wild and liked to have a good time,
12 he was no criminal. Now that I know something about what happened to him to get him in
13 front of Your Honor, I think he probably got involved with some guys who showed him love,
14 support and loyalty. I know that Matt would go to the ends of the earth for someone like
15 that. I can't say what he did or did not do, but I can say that if he fell in with a group that he
16 considered supportive of him, I could see him supporting them in return even if that support
17 was criminal.

18 I want Your Honor to know that Matthew Gudino-Pena is a good person. I know he yearned
19 for stability, a home and support. If he got that from the wrong group, I can see that being
20 problematic for him given his upbringing, but I know he is no danger to any community and I
21 hope the Court can have the utmost leniency in sentencing him given what I understand to be
22 a pretty serious agreed sentence. Matthew does not need that. Matthew needed love and a
23 home.

24 **SENTENCING RECOMMENDATION**

25 For the reasons set forth herein, Mr. Gudino-Pena respectfully requests a
26 sentence of 168 months, the low end of the applicable guideline range found at
paragraph 198 of the presentence investigation report. (ECF 153 p. 34). Mr.
Gudino-Pena is turned 22 years-old this past summer and has no criminal
history whatsoever. (ECF 153 p.27). A sentence of 168 months is life-
changing, as it should be. But there is no identified or discernable difference
between this recommendation and that of the government that would uphold the
goals of sentencing. It is respectfully submitted that a 14-year sentence for a
22-year-old is sufficient to achieve those goals. An additional 3 years, when

1 this young man will not be able to earn any additional time credits under the
2 First Step Act is greater than necessary to achieve those goals.

3 DATED this 26th of October, 2022.

4 **PARTOVI LAW, P.S.**

5 *s/ David R. Partovi*

6 DAVID R. PARTOVI, WSBA #30611

7 Attorney for Matthew Gudino-Pena

8
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10 **CERTIFICATION**

11 I hereby certify that on 26th day of October, 2022, I electronically filed the
12 foregoing with the Clerk of Court using the CM/ECF System which will
13 send notification of such filing to the following:

14 Stephanie A Van Marter 15 Assistant US Attorney 16 U S Attorney's Office - SPO 17 920 W Riverside Suite 300 18 P O Box 1494 19 Spokane, WA 99210-1494 20 stephanie.vanmarter@usdoj.gov	21 Richard R Barker 22 Assistant US Attorney 23 U S Attorney's Office - SPO 24 920 W Riverside Suite 300 25 P O Box 1494 26 Spokane, WA 99210-1494 richard.barker@usdoj.gov
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19 **PARTOVI LAW, P.S.**

20 *s/ David R. Partovi*

21 DAVID R. PARTOVI, WSBA #30611

22 Attorney for Matthew Gudino-Pena